

## **Chapter 36**

### **Order of Business; Privileged Business**

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#### **Research References**

4 Hinds §§ 3056-3152  
6 Cannon §§ 708-757  
Deschler Ch 21 §§ 1-8, 28-31  
*Manual* §§ 869-901

### **A. The Daily Order of Business**

#### **§ 1. In General; Varying the Order of Business**

##### **Generally**

The order or sequence in which business is taken up for floor consideration is governed by various House rules. A general rule for the “daily order of business” is set forth in clause 1 of rule XIV. *Manual* § 869. The order of business may be affected by rule XV, Business in Order on Special Days, which includes: Suspensions (clause 1), the Discharge Calendar (clause 2), the Private Calendar (clause 5), and Calendar Wednesday (clause 6). *Manual* §§ 885-901. The order of business specified by rule XV may be varied by a special order of the House as described in CONSIDERATION AND DEBATE and SPECIAL ORDERS OF BUSINESS.

Although rule XIV states the daily order of business, it does not bind the House to a fixed daily routine. Other House rules make certain important subjects privileged so as to permit the daily order of business to be interrupted or even supplanted entirely for days at a time. See §§ 4-7, *infra*. In-

deed, clause 1 of rule XIV qualifies the daily order of business with the following parenthetical: “(unless varied by the application of other rules and except for the disposition of matters of higher precedence).” Although privileged matters may interrupt the order of business, procedural questions—such as a vote on adopting a special order of business, a motion to resolve into the Committee of the Whole, or the question of consideration—may precede their consideration. This system enables the House to give precedence to its most important business without losing the power by majority vote to go to any other measures on its calendars. For a list of privileged matters that may interrupt the order of business, see *Manual* §§ 870, 871.

The order of business also may be affected by the Speaker’s discretionary authority to recognize Members on particular questions. See RECOGNITION. Pursuant to clause 6 of rule XIV, all questions relating to the priority of business shall be decided without debate.

### **Scheduling Business**

The business of the House is scheduled by the Speaker and the Members who constitute the leadership of the majority party, acting in concert with the leadership of each standing committee and the Committee on Rules. Deschler Ch 21 § 1. The daily or weekly agenda of the House is ordinarily formulated by the Leadership and implemented by special orders of business reported from the Committee on Rules and adopted by the House. The legislative schedule for the House is announced to the Members by the Majority Leader or Whip or a designee or, rarely, by the Speaker. Deschler Ch 21 § 1.1. Such announcement is usually a response to a question asked by the Minority Whip or a designee during a “customarily long one-minute speech” or “colloquy” at the end of the legislative week. 105-2, Mar. 27, 1998, pp 5037-40.

## **§ 2. Sequence of Particular Business**

The general rule specifying the daily order of business is set forth in clause 1 of rule XIV as follows:

- First: Prayer by the Chaplain.
- Second: Reading and approval of the Journal, unless postponed under clause 8 of rule XX.
- Third: The Pledge of Allegiance to the Flag.
- Fourth: Correction of reference of public bills.
- Fifth: Disposal of business on the Speaker’s table as provided in clause 2.
- Sixth: Unfinished business as provided in clause 3.
- Seventh: The morning hour for the consideration of bills called up by committees as provided in clause 4.

- Eighth: Motions that the House resolve into the Committee of the Whole House on the state of the Union subject to clause 5.
- Ninth: Orders of the day.

Ranked first in the daily order of business is the prayer. No business is in order before the prayer, which is offered daily when the House meets. Deschler Ch 21 § 2.

The next order of business is the approval of the Journal. Only messages from the President or the Senate may be received and questions of the privileges of the House raised before the approval of the Journal. No other business, including privileged business, may intervene. See JOURNAL.

Following the approval of the Journal is the Pledge of Allegiance to the Flag, which is led by a Member at the invitation of the Speaker. One-minute speeches, although not provided for by rule XIV, are sometimes entertained by unanimous consent following the Pledge of Allegiance. § 3, *infra*. It is then in order to offer motions or unanimous-consent requests to correct the reference of public bills. See INTRODUCTION AND REFERENCE OF BILLS.

Rule XIV next provides for the disposal of business on the Speaker's table. Under clause 2 of rule XIV, such business consists of the referral of executive communications, messages from the President, and messages from the Senate; motions to dispose of certain Senate bills and resolutions; and motions to dispose of Senate amendments. *Manual* § 873. Messages from the President and messages from the Senate are matters of privilege and may be received, laid before the House, and disposed of whenever business permits. Deschler Ch 21 § 2. Disposition of Senate bills, see SENATE BILLS; AMENDMENTS BETWEEN THE HOUSES.

Under the prescribed order of business in rule XIV, the motion to resolve into Committee of the Whole is in order after the morning hour for consideration of bills reported by committees and before "orders of the day." The morning hour and "orders of the day" have not been used in many years, the House relying instead on special orders of business, which often supersede the regular order of business for lengthy periods. 4 Hinds § 3056; see SPECIAL ORDERS OF BUSINESS.

An order of business resolution reported from the Committee on Rules, permitting the Speaker to declare that the House resolve into the Committee of the Whole to consider a particular bill, gives precedence to such declaration when no other business is pending. Clause 2(b) of rule XVIII. Under clause 4 of rule XVIII, the motion to resolve into the Committee of the Whole is privileged for consideration of general appropriation bills. The motion to resolve into the Committee of the Whole may also be made privileged by the provisions of a statute. Deschler Ch 21 § 30.8.

As to when particular matters are in order, see APPROPRIATIONS; CALENDARS; CONFERENCES BETWEEN THE HOUSES; DISTRICT OF COLUMBIA BUSINESS; PRIVATE CALENDAR; QUESTIONS OF PRIVILEGE; QUORUMS; RESOLUTIONS OF INQUIRY; and VETO OF BILLS.

### § 3. The Daily Practice

The sequence of events on the House floor on any given day may, and usually does, vary from the order prescribed by clause 1 of rule XIV. Certain customs and norms have developed over recent years that allow Members to express their concerns on matters not pending before the House or scheduled for consideration in the daily or weekly agenda. One-minute speeches, special-order speeches, and “morning-hour” debate are all vehicles for this type of free expression. See CONSIDERATION AND DEBATE.

On each legislative day, certain events do occur in a predictable order. The prayer, the approval of the Journal, and the Pledge of Allegiance all occur in sequence, although the actual vote on the approval of the Journal (if demanded) may be postponed.

Before reaching the scheduled business of the day, the Speaker usually agrees to recognize Members for one-minute speeches. The Speaker may limit the number if the anticipated legislative schedule is full. See CONSIDERATION AND DEBATE for practices and norms relating to such speeches. Because of the precise language in the rules governing the Private Calendar and the discharge rule, one-minute speeches may await the disposition of those types or classes of business.

Following the disposition of one-minute speeches, and throughout the legislative day, the Chair lays down messages received from the President or the Senate. The Chair also makes announcements concerning appointments or informing the House of communications received in an official capacity.

Following one-minute speeches, the House normally proceeds to business holding a privileged status for that day. That special status may be set by a standing rule, by a special order of business reported by the Committee on Rules, or by an order previously adopted by the House either by unanimous consent or motion to suspend the rules.

Once this business is reached, the prescribed order is still subject to some flexibility. Certain record votes may be postponed or “clustered” to occur in sequence, pursuant to the Speaker’s authority under clause 8 of rule XX.

When scheduled business has been completed, it is again customary for Members to be given an opportunity to address the House on other subjects.

Special-order speeches may be granted by designation of party leaders for up to one hour or 30 minutes per Member. Limits on the number and duration of such speeches are enforced by the exercise of the Speaker's power of recognition, which follows a policy established on opening day.

## **B. Privileged Business**

### **§ 4. In General; Under the Constitution**

Privileged business is business of such importance as to enjoy precedence over the regular order of business. It is business that can supersede or interrupt other matters that might otherwise be called up or be pending before the House. *Manual* §§ 853-857, 870, 871.

Privileged questions are to be distinguished from what are termed “questions of privilege.” Privileged questions relate to the order or priority of business under the rules of the House, whereas “questions of privilege” pertain to the safety and dignity of the House, to the integrity of its proceedings, or to the rights or reputation of its members under rule IX. 3 Hinds §§ 2654, 2718; see QUESTIONS OF PRIVILEGE.

Privilege may derive from the Constitution, from the rules and practices of the House, and from statutes enacted pursuant to legislative rulemaking power. For example, a veto message from the President is privileged for consideration when received by the House. This privilege arises from article I, section 7, clause 2 of the Constitution. See VETO OF BILLS. Likewise, because the exclusive power of the House in the impeachment of civil officers arises from article I, section 2, clause 5 of the Constitution, the House has determined that propositions to impeach, and reports from a committee investigating charges of impeachment, are highly privileged. See IMPEACHMENT. Similarly, because article VI, clause 3 of the Constitution provides that Representatives shall take an oath, the administration of the oath to Members is privileged. A Member-elect appearing during a session may be administered the oath as a matter of the highest privilege that may interrupt other business. See OATHS.

Certain propositions are privileged for consideration because of indirect constitutional mandate. Examples include concurrent resolutions for adjournment *sine die* or to a day certain and motions incident to establishing a quorum, which are discussed in ADJOURNMENT and QUORUMS. However, privilege is not conferred merely because the question is one committed to the House under the Constitution. *Manual* § 702. For example, a resolution to confirm the nomination of the Vice President, a duty committed to the

House under the 25th amendment to the Constitution, is not privileged for consideration. Deschler Ch 21 § 28.

### § 5. Business Privileged by House Rule

A variety of bills, reports, resolutions, and motions are privileged under the House rules. Some committees are given the power to report to the House at any time on certain subjects. See COMMITTEES. Certain kinds of committee reports are privileged, including reports on the contempt of witnesses, resolutions of inquiry, and election contests. These subjects are discussed in CONTEMPT, RESOLUTIONS OF INQUIRY, and ELECTION CONTESTS AND DISPUTES.

### § 6. — Privilege of Particular Business

The House rules make certain important subjects privileged, which permit the daily order of business to be interrupted or even supplanted entirely for days at a time. Among the privileged matters that may interrupt the order of business are:

- General appropriation bills. Clause 5 of rule XIII.
- Conference reports. Clause 7 of rule XXII.
- Motions to request or agree to a conference. Clause 1 of rule XXII.
- Special orders of business reported by the Committee on Rules. Clause 5 of rule XIII.
- Consideration of amendments between the Houses after disagreement. Clause 4 of rule XXII.
- Questions of privilege. Rule IX; see QUESTIONS OF PRIVILEGE.
- Bills coming over from a previous day with the previous question ordered. 5 Hinds §§ 5510-5517.
- Bills returned with the objections of the President. 4 Hinds §§ 3534-3536.

Some propositions are privileged for consideration on certain days of the week or month. On any Monday, Tuesday, or Wednesday, for example, the Speaker may recognize Members to move to suspend the rules and pass measures. Clause 1 of rule XV. The second and fourth Mondays of the month are set apart for District of Columbia business. Clause 4 of rule XV. Bills on the Private Calendar are called on the first Tuesday of the month and also on the third Tuesday if directed by the Speaker. Clause 5 of rule XV. The Speaker has the discretion to dispense with the call of the Private Calendar on the third Tuesday. *Manual* § 897.

Other classes of business not only are given a prescribed day but also are keyed to a specific reference in the order of business prescribed in clause 1 of rule XIV. For example, motions to discharge, when perfected

and otherwise eligible, can be called up after the approval of the Journal. Clause 2 of rule XV. District of Columbia business is given a position following “disposal of such business on the Speaker’s table as requires reference only.” Clause 4 of rule XV. Both the provisions that designate a day for the class of business, and those that give the class a specified place in the order of business, can be changed by the House by adoption of a special order of business from the Committee on Rules, a unanimous-consent agreement, or a motion to suspend the rules.

The privileged status that is conferred on certain classes of business does not necessarily carry with it an exemption from applicable layover requirements of the House rules. Thus, a conference report may be called up for consideration as privileged business only after the report has been filed and is in compliance with the three-day and two-hour availability requirements of clause 8 of rule XXII. See CONFERENCES BETWEEN THE HOUSES.

When the Speaker is faced with competing Members seeking recognition for consideration of different items of business, it must first be determined whether one class or type of business is of a higher precedence than the other. In making these determinations, the Speaker relies on the rules of the House that give the matter precedence and on prior rulings of the Chair that may predetermine the choice. For a compilation of such rulings, see Deschler Ch 21 § 31. They are of lesser relevance in the modern practice because the House usually determines the order of consideration by adoption of a special order of business reported from the Committee on Rules. Also, the priority of propositions of equal privilege may be determined by the Chair as within the Chair’s power of recognition.

### § 7. — Privileged Motions

Certain motions relating to the order of business are given precedence under the rules of the House. One example is the motion to suspend the rules, which may be used to change the order of business as well as to adopt a measure. See SUSPENSION OF RULES. The motion that the House resolve itself into the Committee of the Whole to consider a general appropriation bill is likewise privileged under the rules. See APPROPRIATIONS. For legislative procedures enacted in law (which may accord privileged status to certain motions), see CONGRESSIONAL PROCEDURES ENACTED IN LAW.

When called up pursuant to the provisions of the discharge rule under clause 2(d) of rule XV, a motion to discharge a committee is privileged; and the Speaker may decline to recognize for a matter not related to the proceedings. 7 Cannon § 1010. Such motions take precedence over business

merely privileged under the general rules of the House. 7 Cannon § 1011; see DISCHARGING MEASURES FROM COMMITTEES.

If authorized, by vote or committee rule, by the committee (or committees) with jurisdiction over the bill, a motion to send a matter to conference is privileged under clause 1 of rule XXII. *Manual* § 1069. The motion is privileged at any time the House is in possession of the papers if the appropriate committee has authorized the motion and the Speaker recognizes for that purpose. *Manual* § 1070. A motion to discharge or instruct conferees is privileged under clause 7(c) of rule XXII. See CONFERENCES BETWEEN THE HOUSES.

For a discussion of precedence of secondary motions, see AMENDMENTS; LAY ON THE TABLE; POSTPONEMENT; PREVIOUS QUESTION; RECONSIDERATION; and REFER AND RECOMMIT.